In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1329

THE STATE OF NEW HAMPSHIRE, PETITIONER

v.

ATOMIC ENERGY COMMISSION AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE ATOMIC ENERGY COMMISSION AND THE UNITED STATES OF AMERICA IN OPPOSITION

We respectfully invite the attention of the Court to the following facts which demonstrate that the petition was filed out of time:

In this proceeding in the court of appeals petitioner sought review of an order of the Atomic Energy Commission authorizing the issuance of a provisional construction permit to the Vermont Yankee Nuclear Power Corporation to build a nuclear power reactor at Vernon, Vermont. The judgment of the court of appeals, rejecting petitioner's contentions and affirming the Commission's order, was entered on January 13, 1969, and a petition for rehearing was denied

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on January 21, 1969. By motion dated April 25, 1969, and received by mail at this Court on April 26, 1969—95 days after the petition for rehearing was denied—petitioner applied to Mr. Justice Fortas for an extension of time to May 1, 1969, within which to file a petition for a writ of certiorari. On April 28, 1969, Mr. Justice Fortas extended the time for filing to May 1, 1969, "without prejudice to the Court's consideration of whether this application has been filed in time." The petition was filed on April 28, 1969.

Section 2101(c) of Title 28 provides that "any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Although the Section also authorizes a Justice of this Court to extend the time for petitioning for 60 days, an application for such extension must be filed within the original 90-day period, as Rule 34(2) of the Rules of this Court recognizes. Since these statutory limits are jurisdictional, the petition should be denied as untimely.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JOSEPH F. HENNESSEY,
General Counsel,
Atomic Energy Commission.

MAY 1969.

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